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PETITION FOR CERTIORARI

No. 963

IN THE

SUPREME COURT OF THE UNITED STATES

1957-1958 Term

Henry Merritt Farnum,
Petitioner
v.
State of Connecticut
and
New York State Department of Mental Hygiene,
Appellees

Henry Merritt Farnum,
Petitioner

70 W. 46th Street,
New York 36, N.Y.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Henry Merritt Farnum,	*	
	*	
Petitioner	*	Civil Actions,
	*	Court of Appeals
v.	*	for the Second
	*	Circuit,
State of Connecticut, and	*	
	*	File Numbers:
New York State	*	24944, and
Department of Mental Hygiene,	*	24945
	*	
Appellees	*	

Consolidating:

Henry Merritt Farnum
v.
State of Connecticut,
On appeal to United States Court of Appeals
for the Second Circuit, File # 24944; and

Henry Merritt Farnum
v.
New York State
Department of Mental Hygiene,
On appeal to United States Court of Appeals
for the Second Circuit, File # 24945.

Petitioner prays that a writ of certiorari issue to review the judgments of the United States District Court for the District of Connecticut on September 23 and October 23, 1957, and of the United States District Court for the Southern District of New York on November 7, 1957, each judgment and opinion now on appeal, with original documents of record in each case, insofar as certified, filed and each case docketed in the United States Court of Appeals for the Second Circuit on December 16, 1957.

(Footnote, January 23, 1958, H.F.)

Additional cases are now pending in the District Court for the Southern District of New York, with issues of law and fact in common with the cases consolidated in this petition. Such issues include Amendment IX, U. S. Constitution. Those cases are:

Henry Merritt Farnum v. International Association of Machinists, Civil No. 129-88, filed by complaint on January 21, 1958; and

Henry Merritt Farnum v. New York City Department of Hospitals, Civil No. 123-316, filed by complaint on August 19, 1957.

CITATIONS TO OPINIONS AND JUDGMENTS BELOW

The oral rulings, and the judgment of Chief Judge J. Joseph Smith of the United States District Court, District of Connecticut, Conn. R. 18-20, 40, are unreported and are printed in Appendix Chereto, infra, pp. C-1 and C-3.[1] His Memorandum of Decision on Motion to Alter and Amend Judgment, Conn. R.44, is unreported and is printed infra, p. C-4.

The memorandum of Judge Sylvester Ryan of the United States District Court, Southern District of New York, NYS R.23, is unreported and is printed infra, p. C-5. The order by Judge Ryan on plaintiff's Motion for Supplemental Certification is unreported and is endorsed on the motion, infra, p. C-6; NYS R.47.

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[1] In this petition, each letter designation followed by page #, for example "p. C-1", indicates the corresponding Appendix.

JURISDICTION

In each of these two cases, plaintiff's application for appointment of a three-judge court was denied, and defendant's motion to dismiss the complaint was granted.

The judgment of the District Court, District of Connecticut was entered on September 23, 1957. Conn. R.40; infra, p. C-3.

Plaintiff's Motion to Alter and Amend Judgment under Rule 59 (a) was denied on October 23, 1957, Conn. R.44; infra, p. C-4.

The judgment of the District Court, Southern District of New York was entered on November 7, 1957. NYS R.2; infra, p. C-5.

The Court's order denying plaintiff's Motion for Supplemental Certification was entered on December 27, 1957. Infra, p. C-6; NYS R.47.

In each of the two cases the record on appeal and the appeal were docketed in the Court of Appeals for the Second Circuit on December 16, 1957; stayed Jan. 17, 1958 pending petition here.

The jurisdiction of this Court is invoked under 28 USC, section 1254 (1).

QUESTIONS PRESENTED

The two cases consolidated here present the question: may the man who loves and the lady he loves, be isolated from each other in the uncontrolled discretion of two state hospitals?

In other words, are orders which forbid communication with a patient, and forbid disclosure of any facts of record about the patient's case including record of the state's authority to detain the patient for an indeterminate period including lifetime,[2] properly within the discretion of a state hospital acting under a state statute?

Those civil liberties are here tested by six criteria, or issues. Each of the six issues are presented in each of two cases. The first case, Farnum v. Connecticut, concerns an order affecting the patient, who is the object of plaintiff's love and affection, before discharge from the supervision of a state hospital. The second case, Farnum v. New York State Department of Mental Hygiene, concerns an order affecting the plaintiff himself as a former patient, after his discharge from such supervision.

1. Constitutional Leadership in the Free World--The Ninth Amendment

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[2] For example, New York State Mental Hygiene Law, sec. 74 (7), infra, p. A-16; Conn. Gen. Stat., 1949, sec. 2653, infra, p. A-10.

Are the rights of the people under the Ninth Amendment to the United States Constitution, protected against state deprivation?

2. Civil Rights Act of 1957

Do federal courts have original jurisdiction over the subject matter of a state order violating civil liberties under the authority of a state statute?

3. Impairment of Jurisdiction of This Court

Does improper refusal by a single judge to appoint a three-judge court impair the appellate jurisdiction of the Supreme Court of the United States?

4. Medico-Legal

Is the privilege of confidential communication between patient and physician, for the benefit of the physician?

5. Human Rights Under the Declaration of Independence

What are the principles for adjudicating human freedom in accordance with the self-evident truths and God-endowed unalienable rights of each person under the Declaration of Independence?

6. Growth of Human Rights

What are the criteria of growth of the law of civil liberties coextensive with human progress?

CONSTITUTIONAL DOCUMENTS AND STATUTES INVOLVED

The Constitutional documents involved are the Ninth Amendment to the Constitution of the United States, and the Declaration of Independence.

The complaints are brought under USC, Title 28, section 1343, as amended by the Civil Rights Act of 1957, Part III, sec. 121; and under other statutes, as hereinafter more fully appears.

In Farmum v. New York State Dept. Mental Hygiene, plaintiff challenges the constitutionality of the state Mental Hygiene Law, including secs. 20 and 34 (9).

In Farmum v. Conn., plaintiff challenges the constitutionality of defendant's statutory authority, including Conn. Gen. Stat., 1949, secs. 2645, 2678, and 2679.

Those and other statutes are listed by title and citation in the Index.

STATEMENT

This petition consolidates two cases with related facts and issues. In each case the plaintiff, Henry Merritt Farnum, seeks injunctive and declaratory relief against the order of a state hospital based upon the authority of a state statute.

Farnum v. Connecticut.

In September, 1955 plaintiff advised the defendant hospital of his warm affection for Mrs. Dorothy Doe Roe, who is single, and is acknowledged by defendant to be a patient under the supervision of Fairfield State Hospital, Newtown, Connecticut.

William F. Green, M.D. is hospital Superintendent, and the hospital is supervised by the Connecticut State Board of Mental Health, Hartford, Conn.[3]

Plaintiff's love and affection for Mrs. Dorothy Roe extend from the time when each was a student, when they met, dated and corresponded at

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[3] Public Act No. 652, State of Connecticut, Jan. Session, 1957, "An Act Creating the State Board of Mental Health"; infra, p. A-6. As to Board of Trustees, Fairfield State Hospital, see 1955 Supplement to the General Statutes, Vol. I, sec. 1532 (d), (1953), infra, p. A-12.

Yale Law School where plaintiff then studied.

Plaintiff advised the defendant that his warm affection extends to the three sons of Mrs. Roe, ages 6 to 11, in the spirit of his regard for their mother.

Notwithstanding that knowledge, defendant by orders continuing in effect since September, 1955 barred the plaintiff by all means at defendant's disposal, in plaintiff's efforts to reach Mrs. Dorothy Roe. By defendant's orders (1) all visits by plaintiff to Mrs. Roe while at the hospital have been forbidden; (2) all communications to her while at the hospital have been obstructed; and (3) all information to plaintiff of any nature, although desired by plaintiff to assist in his actions on behalf of Mrs. Dorothy Roe, has been withheld by the hospital, including information as to the dates when she is absent from the hospital, or home on leave. Defendant bases their order upon the authority of Connecticut statutes.[4]

The result for 27 months, from September 1955 to date, has been completely to isolate the plaintiff and Mrs. Dorothy Roe from each other while she is confined to the hospital, and generally to isolate her from him when, as now, she is absent from the hospital on leave.

In Mrs. Dorothy Roe's latest leave of absence from the hospital, plaintiff for the first

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[4] Conn. R. 3 to 8, citing Conn. Gen. Statutes, 1949, sections 2645, 2678, 2679; infra, pp. A-8 and A-11.

time located and met her, at the home of her mother in Old Greenwich, Connecticut on November 30, 1957.

Mrs. Dorothy Roe confirmed to plaintiff in that meeting that the orders of the state are not at her request. She welcomes plaintiff's letters. She is not discharged from the hospital. She is subject to reconfinement at their discretion, for an indeterminate period of time including lifetime, upon each of her regular visits to the hospital.[5] Her status now is similar to her several previous absences from the hospital. Under section 2653 she may not be discharged until the Fall of 1958, even assuming that she avoids recommitment during that period.

The case therefore presents facts at a critical moment. Defendant's orders continue in force. Under those orders, and in defendant's discretion at any moment, Mrs. Roe's isolation of 27 months may be continued indefinitely, either directly by hospitalization, or indirectly by the relatives of Mrs. Roe acting on advice of the hospital.

In the face of that dilemna Mrs. Dorothy Roe must build her hopes for the future. She cherishes the prospect of reunion with her children in a home of their own, in the pursuit of happiness in the love and personal qualities of mother and sons. The decision as to marriage is hers to make.

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[5] Conn. Gen. Statutes, 1949, sec. 2653; infra, p. A-10.

On August 27, 1957 the complaint was filed.[6] Plaintiff then applied for appointment of a three-judge court, and moved for an interlocutory injunction. Defendant moved to dismiss the complaint. All three motions were heard on September 23, 1957 at Hartford, Connecticut before Hon. J. Joseph Smith, Chief Judge, United States District Court for the District of Connecticut. Judge Smith ruled in favor of the defendant on all three motions.[7]

By opinion dated as of the day of hearing, and unreported, Judge Smith approved judgment on the merits. The judgment granted defendant's motion to dismiss on the grounds of lack of jurisdiction, incapacity of the plaintiff to sue, and improper relief sought; with costs to defendant.[8]

Plaintiff's Motion to Alter and Amend Judgment Under Federal Rule 59(a) was filed October 4, 1957 and requested findings of fact and conclusions of law on all issues on the merits including these: constitutionality of Connecticut statutes which defendant cites as authority for settled policies of the defendant; plaintiff's application for a three-judge court to decide such constitutional issues; and plaintiff's requested relief including an interlocutory injunction.

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[6] Civil No. 6879, United States District Court, Dist. of Connecticut; infra, p. B-1;R.22-25.

[7] Conn. R. 18-19. Infra, pp.C-1,2.

[8] Conn. R. 40. Infra, p. C-3.

Plaintiff's Motion requested that the judgment affirm without ambiguity that all of the rulings of the court are included in the judgment in this case.[9]

By Memorandum of Decision filed October 23, 1957, Judge Smith denied plaintiff's Motion to Alter and Amend on the ground that plaintiff has "...no authority to represent an inmate...."[10]

Yet plaintiff is the only person with the necessary information and interest to enforce such an action whenever Mrs. Dorothy Roe is again isolated by the continuing order of defendant, either while she is hospitalized, or on leave of absence.

On November 7, 1957, plaintiff filed Notice of Appeal to the Court of Appeals for the Second Circuit where the certified record was filed and the appeal docketed on December 16, 1957, case #24944.

Farnum v. New York State Dept. of Mental Hygiene

In the first case, Farnum v. Conn., defendant's order forbidding visits to Mrs. Dorothy Roe was issued in September, 1955.

As the result plaintiff sought in many ways to see or to contact Mrs. Dorothy Roe at some

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9 Conn. R. 41, 42.

10 Conn. R. 44; infra, p. C-4.

indefinite moment of her absence from the hospital on leave, or to contact her indirectly in the hospital.

Those attempts by plaintiff to locate or to contact Mrs. Roe were the occasion for plaintiff's detention for fourteen months by the New York State Department of Mental Hygiene.

In the second case, Farnum v. NYS Dept. Mental Hygiene, plaintiff urges the unconstitutionality of the state's order under authority of state statutes. That order withholds from the plaintiff his own hospital record, as "confidential" in the state's discretion.[11]

For the purpose of presenting a clear case for decision of that constitutional issue by this Court, plaintiff refrains from any allegations which defendant may cite as color for release "in their discretion" of the record now withheld, thus to circumvent the clear issue now presented in the second case.[12]

During plaintiff's fourteen months of detention from December 1955 to February 1957,

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[11] NYS R. 19; infra, p. B-12. Plaintiff's Exhibit II, not certified by the District Court to the record on appeal, is relevant.

For state statutory control of state hospitals, see Mental Hygiene Law, secs. 4 and 11; infra, p. A-13.

[12] Complaint, paragraphs 5 (c) and (d), NYS R. 2-3; infra, p. B-11.

plaintiff attempted without success to communicate with Mrs. Dorothy Roe by letters and small gifts. In February 1957, plaintiff was released under "convalescent care", and discharged on July 25, 1957.

In February, 1957 plaintiff resumed his attempts to visit Mrs. Roe, and to obtain information about her both directly through the hospital, and also indirectly.

Thus the consolidation of the two cases by this petition is based upon the facts common to both, presenting related issues of secrecy and concealment of facts of record.

In Farnum v. New York State, etc., that record comprises the entire hospital record of plaintiff's detention for an indeterminate period, including lifetime, presumably upon allegations of mental illness.

On July 29 and August 8, 1957, plaintiff requested that record from the defendant. In reply the defendant represented that the entire record is "confidential", and ordered that plaintiff's request be denied. No part of the record has been received in response to plaintiff's request. Plaintiff cites the New York state Mental Hygiene Law as authority.[13]

On August 19, 1957 the complaint was filed, followed by plaintiff's application for

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[13] NYS R. 19. Vol. 34A, Mental Hygiene Law, sections 20 and 34 (9); infra, pp. A-13 to A-15.

appointment of a three-judge court.[14] Defendant moved to dismiss the complaint. On those motions, plaintiff submitted document #1, Plaintiff's Exhibits; and #2, Memorandum of Law. Defendant then submitted #3, a Memorandum of Law. Plaintiff followed with document #4, Reply Memorandum of Law.

On November 7, 1957, Judge Ryan granted defendant's motion to dismiss, without costs, on the ground that plaintiff has not exhausted his "state administrative or judicial remedies", and that the state statute and order "does not operate to deprive either plaintiff or anyone else of constitutionally protected rights...."[15]

The District Court certified only document #4, and has denied plaintiff's motion for certification of the other three documents.[16]

On November 21, 1957, plaintiff filed Notice of Appeal to the Court of Appeals for the Second Circuit where the record, insofar as certified, was filed and the appeal docketed on December 16, 1957, case 24945. The Supplemental Record on Appeal is being docketed.

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[14] Civil No. 123-315, United States Dist. Court for the Southern District of New York. NYS R. 1-3; infra, pp. B-9 to B-12; and B-13.

[15] NYS R. 23; infra, p. C-5.

[16] For a full analysis of this issue, including the disposition of document #3, see infra, pp. 25 to 28.

REASONS FOR GRANTING THE WRIT

Early decision by this Court of the issues here presented is urgently needed as a bulwark of human rights, in the free world that looks to America for constitutional leadership.

The bulwark will be strengthened by each of six criteria for civil liberties.

The early decision is urgently needed by the parties, to prevent irreparable loss.[17]

1. Constitutional Leadership in the Free World--the Ninth Amendment.

Did the framers intend to protect against state violation, the unenumerated rights "...retained by the people..." under the Ninth Amendment?

That vital issue is undecided directly by this Court, as far as plaintiff is aware.

Plaintiff"s affirmative position is the logical outgrowth of the following principles.

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[17] For such risk as to Mrs. Dorothy Doe Roe, see supra, p. 10.

Plaintiff's pursuit of domestic happiness is directly at stake, and his career towards its fulfillment.

In similar cases involving state statutes, without citing the Ninth Amendment, this Court has decided similar issues on the merits and has found state statutes unconstitutional. Therefore specific, unenumerated human rights are among those reserved to the people, and defended against deprivation by state legislatures which exceed state legislative power.[18]

In similar cases involving state statutes, and specifically citing the Ninth Amendment, other federal and state courts recognize the principle of unenumerated human rights by deciding such issues on the merits.[19]

This Court, without exception since 1895, confines its federal restriction to amendments I to VIII, comprising enumerated rights.[20]

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[18] For example Thompson et al. v. Consolidated Gas Utilities Corp., 300 U.S. 55, 81 L.Ed. 510, 57 S.Ct. 364, 1937; Parkersburg v. Brown, 106 U.S. 487, 27 L.Ed. 238, 1 S.Ct. 442, 1882; Gunn v. Berry, 82 U.S. 610, 21 L.Ed. 212, 1872; and cases cited.

[19] For example Clay v. City of Eustis, 7 F 2d 141 (D.C., S.Dist.Fla.), 1925; State v. Michel, 121 La. 374, 46 So. 430, 1908.

[20] For example Palko v. Connecticut, 302 U.S. 319, 82 L.Ed. 288, 58 S.Ct. 149, 1937; Ohio ex rel. Lloyd v. Dollison, 194 U.S. 445, 447, 48 L.Ed. 1062, 24 S.Ct. 703, 1904; Bolln v. Nebraska, 176 U.S. 83, 44 L.Ed. 382, 384, 20 S.Ct. 287, 1899; Holden v. Hardy, (Continued next page)

Plaintiff petitions for hearing by this Court of the review of Constitutional history, to establish that the Ninth Amendment protects such unenumerated civil liberties against state deprivation.[21]

2. Civil Rights Act of 1957.

Jurisdiction of federal courts to adjudicate the question here presented, is in issue on four grounds each invoking statutory authority amended by the Civil Rights Act of 1957.[22]

The jurisdictional issues are:

a. jurisdiction of the subject matter;

b. availability of injunctive and declaratory relief;

c. necessity to exhaust state administrative and legal remedies; and

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20 (Continued) 169 U.S. 366, 42 L.Ed. 780, 18 S.Ct. 383, 1897; and Brown v. Walker, 161 U.S. 591, 40 L.Ed. 819, 824, 16 S.Ct. 644, 1895.

21 Guidelines for such a review are established by Bennett B. Patterson in The Forgotten Ninth Amendment. Indianapolis: Bobbs-Merrill Company, 1955. 217 pp.

22 85th Congress, Public Law 85-315, 71 Stat. 637, Part III, sec. 121. September 9, 1957; infra, p. A-2.

d. In Farnum v. Conn., standing of a person to litigate, whose relationship is that of love and affection.

Plaintiff pleads the utmost urgency in the need for decision by this Court, to protect the Civil Rights Act against impairment by the District Court decisions here reviewed.

The issues undercut the sole section of the Civil Rights Act of 1957 providing for access to the courts by individual complainants in their own behalf, on issues of civil liberties.[23]

Impairment of such relief is particularly acute for it is the sole surviving section of Part III after Congress rejected the Attorney-General's request for authority to litigate in behalf of individual claimants.

a. Jurisdiction of the subject matter.[24]

The complaints present as subject matter, issues of deprivation of freedom to

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[23] Access in actions to protect voting rights, is further provided in Part IV of the Act.

[24] For the complaints, see Conn. R. 22-25; infra, p. B-1; and NYS R. 1-3; infra, p. B-9.

For District Court rulings on this point, please note Conn. R. 19 and 40, infra, pp. C-1 and C-3; and NYS R. 23, infra, p. C-[illegible].

communicate, freedom to visit, right to receive unprivileged records and information, freedom of access to obtain waiver of privilege, freedom of access to facts controlling the pursuit of happiness, freedom in that pursuit, and other civil liberties comprising unenumerated rights protected by the federal Constitution.

b. Availability of injunctive and declaratory relief.[25]

The complaints request injunctive and declaratory relief, specifically within the Civil Rights Act of 1957, protecting plaintiff's right "...To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights...."[26]

Each complaint in its first paragraph establishes jurisdiction under Acts of Congress, including USC Title 28, sec. 1343, subd. 3, "To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal

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[25] For District Court rulings on this point, note particularly Conn. R. 40, 44, Infra, pp. C-1 to C-3; and NYS R. 23, Infra p. C-5.

[26] Infra, p. A-2.

rights of citizens..."[27]

Jurisdiction is further invoked under Title 42, secs.1983 and 1985.[28]

c. Exhaustion of state administrative and legal remedies.[29]

Plaintiff emphasizes the urgency that the original jurisdiction of district courts under the Civil Rights Act of 1957 be unimpaired by requirement of exhaustion of state legal and administrative remedies.

The serious need is to stabilize the original jurisdiction of federal courts in the protection of civil rights, by reaffirming that the sole requirement is a question "which by law brings the case within the jurisdiction of a Federal Court. The right of a party plaintiff to choose a Federal court where there is a choice cannot be properly denied...."[30]

That opinion was reemphasized by Justice Frankfurter's warning, in his concurring opinion

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[27] Infra, p. A-3.

[28] Infra, p. A-5.

[29] For District Court ruling on this point, please note NYS R. 23, infra, pp C-5,6

[30] Willcox v. Consolidated Gas Co., 212 U.S. 19, 40, 53 L.Ed. 382, 29 S.Ct. 192, 1909.

of Alabama Public Service Commission v. Southern Railway Co.[31]

A ruling for defendant on this issue increases the risk to original federal jurisdiction in civil rights cases, by nullifying the Congressional reaffirmation of such original jurisdiction after the intervening decision in the Alabama case.

d. Standing of a person to litigate, whose relationship is that of love and affection.[32]

In Farnum v. Conn., plaintiff acts in his own behalf. Plaintiff further claims standing to act as a person whose relationship to the patient is that of love and affection. If the latter issue is new to this Court, it is logically supported by the standing of a friend to act in behalf of the patient in nine legal capacities under Connecticut statutes.[33]

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[31] 341 U.S. 341, 349-350, 95 L.Ed. 1002, 71 S.Ct. 762, 1950.

[32] For District Court ruling on this point, please note Conn. R. 18-19, 40, and 44; infra, pp. C-1 to C-4.

[33] Infra, pp. A-8 to A-11.

Section 2654 of those statutes further protects the right of a person not even a friend of the patient, but merely "interested in his welfare", to apply for a writ of habeas corpus.

3. Impairment of Jurisdiction of this Court.[34]

Appellate jurisdiction of this Court over the issues of the instant cases, depends upon USC Title 28, sec. 1253, "Direct Appeals from Decisions of Three-Judge Courts".[35]

Plaintiff's necessity to resort to this petition results from denial by the District Court in each case, of plaintiff's application for appointment of a three-judge court.

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[34] This Court may issue a writ of mandamus. Metropolitan Water Company of West Virginia, 220 U.S. 539, 55 L.Ed. 575, 31 S.Ct. 600, 1911.

In Farnum v. Conn., please note oral analysis, Conn. R. 15, infra p. B-6; and also plaintiff's Application for Three-judge Court, Conn. R. 31.

In Farnum v. New York State, etc., please note plaintiff's Application for Three-Judge Court, NYS R. 13-14, infra, p. B-13.

On irreparability, please see this petition, supra, pp. 10 and 16.

[35] Infra, p. A-4.

Plaintiff respectfully contends that the denials of his applications are in error, for the complaint in each case presents issues of federal unconstitutionality of state orders under authority of a state statute, with issues of irreparable injury properly for decision by a three-judge court under USC Title 28, secs. 2281 and 2284.[36]

Therefore only this Court has power to remedy the impairment of its appellate jurisdiction by District Court denial of plaintiff's applications for appointment of a three-judge court.

4. Medico-Legal.

Such issues presented by this petition include communications based upon love and affection, and secrecy of records.

a. Communications.

In Farnum v. Conn., the patient's right of communication is one-way only; from the patient, not to him. The patient has no right to receive visitors. Even a visit by an attorney is in the state's discretion.[37]

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[36] Sec. 2281, infra, p. A-4.

[37] Conn. Gen. Statutes, 1949, sections 2678 and 2679; infra, p. A-11.
Conn. Departmental Regulation 119-2-12, infra, p. A-12.

b. Secrecy of records.

In both cases, the defendant hospital claims the discretionary right to withhold from the plaintiff the facts of record.

By analogy, and for purposes of illustration, consider the effect of similar withholding by court order of documents comprising court records.

In a motion to dismiss the complaint on the merits, the issues are legal issues because the facts are assumed as pleaded.[38]

In the instant cases, those issues were matters of record. Plaintiff's Notices requested the certification of each document, specified by title. Such notice is a mere formality under Rule 11(a) of the Court of Appeals for the Second Circuit.[39]

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[38] The risk created in the instant cases by the District Court's claim of discretion to withhold exhibits and memoranda of law, is particularly acute in view of the similar principle advanced by another court, that there is no mandatory duty upon a court even to receive legal memoranda or evidence in a hearing upon motion to dismiss a complaint. United States v. Fujimoto et al., 102 F. Supp. 890 (Dist. Hawaii), 1952.

[39] Plaintiff's Notice of Record on Appeal, Conn. R 48-49, NYS R. 36-37. Plaintiff's Notice of Supplemental Record on Appeal, NYS R. 48.

(Continued next page)

In the New York case, certification of important documents was refused despite that Notice and Rule. On plaintiff's Motion denied, the District Court claimed and exercised discretion to withhold those matters of record on appeal.[40]

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[39] (Footnote Continued)

In Farnum v. New York State, etc., documents included:

#1 Plaintiff's Exhibits
#2 Plaintiff's Memorandum of Law
#3 Defendant's Memorandum of Law
#4 Plaintiff Reply Memorandum of Law
#5 Defendant's Exhibits
#6 Plaintiff's certified letter to the Clerk December 26, 1957.

In Farnum v. Conn., documents included:

#1 Plaintiff's Memorandum of Law
#2 Defendant's references, solely in context, to defendant's Memorandum of Law, Conn. R. 2, 12. However defendant now states that there is no such document.

Legal memos appended to this petition and cited on this issue, are for identification only, and are not submitted as supporting briefs under Rules 23 (h) and 23 (j)(3) of this Court. Therefore the citations in those memos are not indexed.

[40] Plaintiff's Motion for Supplemental Certification, infra, pp.B-18 to 20;denied, infra, p. C-6; NYS R. 39-40, and 47.

In both cases, a portion only of the legal memoranda were certified, and the balance withheld. In the New York case, the Exhibits of one party were certified, and those of the other party withheld.[41]

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[41] "Discretion" asserts a right to exclude matters of record.

In NYS, documents #1 and #2 are withheld by court order, and are not certified on appeal; supra, footnote 40.

In NYS, document #6 also is withheld.

In Conn., document #2 was not in the court file, and inasmuch as it cannot be found, it is not certified. Conn. R. 43.

"Discretion" also asserts a right to include matters of record.

In NYS, only documents #3, #4 and #5 are certified, NYS R. 41-45, 24-30, and 10-12; infra, pp. B-14 to B-17. Please note that certification of document #3 is contrary to the Court's ruling, NYS 41-45, and 47; infra, p. C-6.

In Conn., only document #1 is certified. Conn. R. 38-39; infra, pp. B-7 to B-8.

The Court's claim of discretion to withhold those matters of record on appeal, deprives plaintiff of his right under the Ninth Amendment that a case shall disclose its issues.[42]

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[42] Events here show the eight results when withholding of a record is discretionary.

1. Some records remain invisible and unofficial, e.g. NYS document #6 and Conn. document #2.

2. Some court records disappear, e.g NYS document #3.

   (See para. B, referring to "2", "Defendant's Memorandum of Law", Motion, NYS R. 39-40; infra, pp.B-18,19)

3. A letter delivered by certified mail and relevant to that disappearance, is withheld.

   (NYS document #6, plaintiff's certified letter to the Clerk, U.S. Dist. Court, So. Dist. N.Y., Dec. 26, 1957)

4. Some documents are completely withheld by the Court on Motion denied, e.g. NYS documents #1 and #2. (Supra, footnote 40)

5. NYS document #3, thus withheld by the Court on Motion denied, nevertheless is certified on appeal, NYS R. 41-45.

6. Those records not withheld are out of context, e.g. NYS documents #4 and #5.

(Continued next page)

c. Summary.

This Court is here in the same position relative to the uncertified court records, as is the plaintiff relative to the hospital records; the issues thereby presented are matters of sheer conjecture.

Plaintiff contends that each action thus preventing communication, each withholding of the hospital record, and each failure to certify the court record, constitutes deprivation of rights reserved to the people by the Ninth Amendment to the federal Constitution.

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[42] (Footnote Continued)

(NYS document #4 cites and depends for its meaning upon documents #1 and #2, not certified; NYS R. 24-29, infra, pp. B-14 to 17.

NYS document #5 comprising defendant's Exhibits I to III, relate to plaintiff's Exhibit II not certified; NYS R. 10-12.)

7. For those six reasons, no clear record exists by which to judge any presumption of validity as to the decisions of a District Court.

8. For those seven reasons, the record of issues is incomplete for contest upon appeal (from a three-judge court), or upon review (by mandamus or certiorari).

F. Human Rights Under the Declaration of Independence

The Declaration of Independence is an important documentary source of unenumerated rights reserved to the people by the Ninth Amendment.[43]

This Court recognizes the Declaration as a source of human rights to be construed on its merits, separately from the enumerated rights of the Constitution.[44]

Plaintiff proposes that such meaning of the Declaration of Independence is clarified by the Ninth Amendment to the Constitution. The clarification will extend to many issues presented by this petition, including freedom to communicate, freedom to visit a loved one, right to receive unprivileged records and information, freedom of access to obtain waiver of confidential privilege, freedom of access to facts controlling the pursuit of happiness, freedom in that pursuit, standing to act for

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[43] Infra, p. A-1.

[44] Butchers' Union Company v. Crescent City Company, 111 U.S. 746, 762, 28 L.Ed. 585, 4 S.Ct. 652, 1884.

another in the relationship of love and affection, and right that a court record shall include the written record of legal issues.

Citing the Declaration of Independence the Supreme Court states, "The right to follow any of the common occupations of life is an unalienable right. It was formulated as such under the phrase 'pursuit of happiness' in the Declaration of Independence, which commenced with the fundamental proposition that 'all men are created equal, that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness'. This right is a large ingredient in the civil liberty of the citizen...." (Italics in original)[45]

Again, on page 764, the Court says, "I hold that the liberty of pursuit--the right to follow any of the ordinary callings of life...is one of the privileges of a citizen of the United States...."

After thus evaluating the unenumerated rights, the Court then turned to an independent evaluation of the right to "liberty", enumerated in the Fourteenth Amendment. (Page 475) "...But if it does not abridge the privileges and immunities of a citizen of the United States to prohibit him from pursuing his chosen calling, ...it certainly does deprive him (to a certain extent) of his liberty...."

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[45] Butcher's Union Company v. Crescent City Company, 111 U.S. 746, 762.

In a state constitution, the pursuit of happiness is even extended beyond love, the family and the home, to include pleasure. "...The framers of the Constitution of this state had gotten away from the dour notion that mundane happiness is sinful; and the first section of the state Bill of Rights reads: 'All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness....' The court interprets that condition to mental and moral health which is called happiness to include pleasure...."[46]

The role of human communication is cited in another court, "...communication...the vehicle of human understanding...."[47]

6. Growth of Human Rights.

A United States Constitution that protects the unenumerated civil liberties of each person, emerges as the tool envisaged by John Adams[48] in 1765:

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[46] Smith v. Steineauf, 140 Kan. 407, 36 P 2d 995, 1934.

[47] United States v. Painters Local Union No. 481 et al., 79 F. Supp. 516 (D.Conn.), 1948.

[48] Quoted in Foreword, Rossiter, Clinton, Seedtime of the Republic, N.Y.: Harcourt, Brace and Company, 1953. 558 pp.

"I always consider the settlement of America with reverence and wonder, as the opening of a grand scheme and design in Providence for the illumination and emancipation of the slavish part of mankind all over the earth."

The foregoing issues numbered 1 to 5 are practical criteria for this, the 6th issue: principles to control the growth of human rights.

Constitutional leadership in the free world represents a challenge greater than competition in science. A billion open-minded fellow-men, mostly of non-white races, measure the toll of Russia's war potential in contrast to our civil liberties as truly practiced. Nine children in Little Rock hold armies at bay.

New human rights. In the understanding by this Court of our Constitutional birthright, is the answer.

Progress in human rights will evolve in the people's new insight into God's endowment of unalienable rights: individual free will, family pursuit of happiness, and truth in love that no boundaries can imprison.

That new insight creates the free world's constant growth in ethics, international declarations of human rights, communications, science, civil rights legislation and commissions, and insight into Constitutional history.

Criteria. Particularly by use of the Ninth Amendment, man's new awareness of his individual dignity and destiny will be tested by such issues as judicial construction of civil rights statutes, jurisdiction, access to facts of record, legalities of each specialized pursuit, and the evolution of unalienable human rights endowed in the name of America's Declaration of Independence.

Agenda. Plaintiff proposes that those issues, which are the issues of this petition, in truth present the agenda of the growth of civil liberties.

CONCLUSION

For the foregoing reasons, this petition should be granted.

Respectfully submitted,

Henry Merritt Farnum

Henry Merritt Farnum,
Petitioner

70 W. 46th Street,
New York 36, New York

January 18, 1958

APPENDIX A: CONSTITUTIONAL DOCUMENTS AND STATUTES

CONSTITUTIONAL DOCUMENTS

CONSTITUTION OF THE UNITED STATES

AMENDMENT IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

DECLARATION OF INDEPENDENCE

(Continental Congress. July 4, 1776)

When in the course of human events it becomes necessary for one people to dissolve the political bonds which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident; that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying it's foundation on such principles, and organizing it's powers in such form as to them shall seem most likely to effect their safety and happiness....

STATUTES--UNITED STATES CODE

CIVIL RIGHTS ACT OF 1957

(85th Congress, 1st Session, Public Law 85-315;
September 9, 1957, 71 Stat. 637)

Part III--To Strengthen the Civil Rights Statutes, and for Other Purposes

Sec. 121. Section 1343 of title 28, United States Code, is amended as follows:

(a) Amend the catch line of said section to read, "Sec. 1343. Civil rights and elective franchise"

(b) Delete the period at the end of paragraph (3) and insert in lieu thereof a semicolon.

(c) Add a paragraph as follows:

"(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

....

TITLE 28, SECTION 1343

(As amended by the Civil Rights Act of 1957)

Sec. 1343. Civil Rights and elective franchise.

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

TITLE 28, SECTION 1253

Sec. 1253. Direct appeals from decisions of three-judge courts.

Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.

TITLE 28, SECTION 2281

Sec. 2281. Injunction against enforcement of state statute: three-judge court required.

An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such state in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of 3 judges under Section 2284 of this title.

TITLE 42, SECTION 1983

Sec. 1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

TITLE 42, SECTION 1985

Sec. 1985. Conspiracy to interfere with civil rights--Preventing officer from performing duties.

...

(3) Depriving persons of rights or privileges.

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the

laws; ...in any case of conspiracy set forth in this section, ...the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

STATUTES--CONNECTICUT

AN ACT CREATING THE STATE BOARD OF MENTAL HEALTH

(Public Act No. 652, State of Connecticut, January Session, 1957)

....

Section 2....There is established a department of mental health and a board of mental health of seven members, three of whom shall be physicians licensed to practice medicine in this state who have had experience in the field of psychiatry and all of whom shall serve without compensation.... The commissioner of mental health shall be an ex-officio member of the board of mental health without vote and shall attend its meetings. All actions of the department of mental health shall be taken by the commissioner or under his direction by such agents or subordinate officers as he may designate. The governor shall appoint the members to serve on the board for terms of four years each, ...None of the governor's appointees to the board shall be employed by the state or be a member of the staff of any institution wherein their compensation is paid wholly by the state.

Section 3....The board shall be responsible for developing and maintaining programs and policies concerning care and treatment of the mentally ill

and the administration of the department....

Section 4. The executive head of the department of mental health shall be a commissioner of mental health, appointed by the governor, after consultation with the board....He shall be a "department head" within the meaning of sections 27d to 30d, inclusive....The commissioner shall direct, coordinate and control the operations of the department.

Section 5. Subject to the approval of the board of mental health, the commissioner shall be responsible for the overall supervision and direction of all hospitals, institutions and facilities of the department of mental health and for developing and maintaining programs and policies concerning the care and treatment of the mentally ill. He shall establish regulations for the administrative practices and therapeutic methods in said hospitals, institutions and facilities in accordance with recognized standards of health....

Section 6. The Connecticut State Hospital, The Norwich State Hospital, The Fairfield State Hospital, The Connecticut Child Study and Treatment Home and Undercliff Hospital and the boards of trustees thereof shall be a part of the department of mental health and shall, for the purposes of chapter 11, constitute one budgeted agency whose executive head shall be the commissioner of mental health....

Section 7. The commissioner of mental health, with the approval of the board of mental health, shall appoint the superintendents of...the Fairfield State Hospital....A superintendent shall be removable by the commissioner with the approval

of a majority of the members of the board of mental health. Subject to the overall supervision and direction of the commissioner, each superintendent shall be in charge of his hospital ....

Connecticut General Statutes, 1949
Vol. I, Title 19
CHAPTER 119. MENTALLY ILL PERSONS

Section 2645. Proceedings upon complaint. Restraint pending proceedings. Necessary evidence.

Upon such complaint being filed in the probate court, such court shall assign a time, not later than ten days thereafter, and a place, for hearing such complaint, and shall cause reasonable notice thereof to be given to the person alleged to be mentally ill and to such relative or relatives and friends as it may deem advisable. Such court may also issue a warrant for the apprehension and bringing before it of the person complained of, and shall see and examine such person, if in its judgment his condition or conduct shall render it necessary or advisable so to do, or state in its final order why it was not necessary or advisable so to do. If such court shall be satisfied that such person is a dangerous person to be at large, it may make such order for his restraint and custody while the proceedings are pending as it may deem advisable; but such person shall not be prevented from having all reasonable opportunities to consult counsel and friends and to prepare and make his defense to such application. In addition to such oral testimony as may be offered at such hearing, the

court shall require the sworn certificates of at least two reputable physicians selected by the court, whom it shall find to be graduates of legally organized mental institutions and to have been practitioners of medicine at least three years within this state, and not connected with any hospital for mental illness, nor related by blood or marriage to the complainant, nor to the person alleged to be mentally ill, to the effect that they have mentally examined such person within ten days of such hearing and that in their opinion such person is mentally ill and a fit subject for confinement in a hospital for mental illness. If, on such hearing, the court shall find that the person complained of is mentally ill and a fit subject for treatment in a hospital for mental illness or that he ought to be confined, it shall make an order for his commitment to a hospital for mental illness to be named in such order, there to be confined while such mental illness shall continue or until he shall be discharged in due course of law, and commanding some suitable person to convey him to such hospital for mental illness and deliver him, with a copy of such order and of such certificates, to the keeper thereof. In appointing a person to execute such order, the court shall give preference to a near relative or friend* of the mentally ill person, so far as it shall deem it practical and judicious. Such court may, after hearing, when it shall find it to be for the best interest of the person so committed, revoke such order of commitment.

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* Italics are supplied to the word "friend" in its nine legal capacities under Connecticut statutes cited herein, pp.A-8 to A-11.

Section 2653. Parole or temporary absence of mentally ill patients.

The superintendent or keeper of any institution used wholly or in part for the care of the mentally ill may, under such restrictions or agreements as he shall deem advisable, permit any inmate thereof temporarily to leave such institution, in charge of his guardian, relatives or friends, *or by himself, for a period of time not exceeding one year. The original order of commitment shall remain in force and effect until such patient shall be officially discharged by the authorities of such institution. Should it appear to be for the best interest of the public or for the interest and benefit of such patient, he may return or be returned by his guardian, relatives or friends*or he may be recalled by the authorities of such institution, at any time during said one year and prior to his official discharge....

Section 2654. Writ of habeas corpus.

Each mentally ill person confined in a hospital for mental illness in this state shall be entitled to the benefit of the writ of habeas corpus, and the question of mental illness shall be determined by the court or judge issuing such writ, and, if the court or judge before whom such case is brought shall decide that the person is mentally ill, such decision shall be no bar to the issuing of such writ a second time, if it shall be claimed that such person has been restored to reason. Such writ may be applied for by such mentally ill person or on his behalf by any relative, friend*or person interested in his welfare.

Section 2673. Appeal.

Any person aggrieved by an order, denial or decree of the court of probate under this chapter, including any relative or friend, on behalf of any person found to be mentally ill, shall have the right of appeal as in other cases. The court of probate, on an appeal, shall make all necessary orders of notice to the parties to the proceedings and to such other persons as it may deem advisable....

Section 2678. Visits to patients in hospitals for mental illness.

An attorney at law retained by or on behalf of any patient in any hospital for mental illness, or any medical practitioner designated by such patient or by any member of his family or by a relative or friend of such patient, shall be admitted to visit such patient at all reasonable hours, if, in the opinion of the keeper of such hospital, such visit would not be injurious to such patient or if a judge of the superior court shall first order in writing that such visit be allowed or if the approval of the commissioner of welfare shall be first secured.

Section 2679. Patient may communicate with friends in writing.

All persons detained as mentally ill shall at all times be furnished with materials for communicating under seal with any suitable person outside the hospital for mental illness, and such

communications shall be stamped and mailed daily. Should the patient desire it, all rational communications shall be written at his dictation and duly mailed to any relative or person named by the patient.

Connecticut Departmental Regulations

Regulation 119-2-12, published Connecticut Law Journal, Feb. 14, 1956.

Each institution shall comply with the provisions of Sections 2678 and 2679 of the General Statutes relating to visiting of patients in hospitals for mental illness and the opportunity of patients to communicate with suitable persons outside the hospital. On request of a patient, the hospital shall give him a copy of such sections, or a copy of the rules governing the hospital, such rules to contain a statement of the patient's right under such sections. Copies of such rules shall be fixed with the Department of Mental Health.

Connecticut 1955 Supplement to the General Statutes, Vol. I

Section 1532d (1953). There shall continue to be a board of trustees of twelve persons appointed by the governor for The Connecticut State Hospital, the Norwich State Hospital and the Fairfield State Hospital, respectively. The governor shall bienially appoint four trustees for each of said hospitals....

STATUTES--NEW YORK STATE

Consolidated Laws, Vol. 34A,
Chapter 27, "Mental Hygiene Law"

Section 4. Organization of department.

....The powers and duties of all divisions, bureaus, officers and employees of the department shall be exercised and performed subject to the supervision, direction and control of the commissioner.

Section 11. Control of state institutions within the department.

(1) The department of mental hygiene shall have the jurisdiction, supervision and control of the state hospitals, as now or hereafter established for the care and treatment of the mentally ill, but not including Matteswan nor Dannemora state hospitals....

Section 20. Record of patients and inmates.

The department of mental hygiene shall keep in its office, and accessible only to the commissioner, medical director and such other officers and subordinates of the department as the commissioner may designate, except by the consent of the commissioner or an order of a judge of a court of record, a record of each patient admitted to an institution within the department..., and

also the records, papers and reports of examination of others made by any division or bureau of the department....

Section 34. Powers and duties of director.

The director of each state institution in the department shall be its chief executive officer, and in his absence or sickness, the associate director, or an assistant director or other officer designated by the director shall perform the duties, exercise the powers, and be subject to the responsibilities of the director. Subject to the statutory powers and rules of the commissioner, or rules approved by him, the director shall have the supervision and management of the institution....Subject to such powers of the commissioner and such rules, he shall:

(1) Personally maintain an effective supervision and inspection of all parts of the institution and generally direct the care and treatment of the patients. To this end the director shall make or cause to be made an examination of the condition of each patient, within five days after his admission to the institution, and shall regularly visit all of the wards or apartments for patients at such times as the rules applying to the institution shall prescribe....

(9) Keep a record, in which he shall cause to be entered at the time of reception of any patient, his name, residence and occupation, and the date of such reception, by whom brought and by what authority and on whose petition certified or received, and an abstract of all

orders, warrants, requests, petitions, certificates and other papers accompanying such persons.

The director within three days after the reception of a patient, shall make, or cause to be made a descriptive record of such case. He shall also make or cause to be made entries from time to time of the mental state, bodily condition and medical treatment of such patient during the time such patient remains under his care, and in the event of discharge or death of such person, he shall state in such record the circumstances thereof, and make such other entries at such intervals of time and in such form as may be required by the commissioner. Such record shall be accessible only to the director and such officers and subordinates of the institution as he may designate and to the commissioner and his representatives, except on the consent of the commissioner or an order of a judge of a court of record....

(16) The director shall cause to be held at least two meetings of the medical staff each week, at which the condition of patients, especially those recently admitted, shall be considered, and matters of medical service generally shall be given attention. The director shall cause a complete clinical record to be made of each patient, to be kept in such form and to comprise such matters as the commissioner may direct.

(Detention indeterminate period, to lifetime):

Section 74. Admission on court certification.

....

(7) At any time prior to the expiration of sixty days from the date of the order made as provided by this section, the director...may, if he finds that such patient is in need of continued care and treatment, file in the office of the county clerk, a certificate setting forth his findings and the need for the continued care and treatment of such patient. Upon the filing of such certificate, the order theretofore made by the judge shall become a final order, and such patient shall thereafter remain in such institution...until his discharge in accordance with the provisions of this chapter.

APPENDIX B: EXTRACTS FROM TRANSCRIPTS OF RECORDS

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF CONNECTICUT

Civil Action, File Number 6879

COMPLAINT

Henry Merritt Farnum, Plaintiff	
v.	Filed August 27, 1957
State of Connecticut, Defendant	

1. This complaint arises under the Act as amended September 3, 1954, c. 1263, sec. 42, 68 Stat. 1241; USC, Title 28, section 1343; and under other statutes; as hereinafter more fully appears.

2. (a) Plaintiff, Henry Merritt Farnum, is a citizen of the state of New York, doing business at 168 Mason Street, Greenwich, Connecticut, and at 70 W. 46th Street, New York, N.Y.

(b) All rights, privileges, immunities, and relief claimed by plaintiff, he also claims on behalf of Mrs. Dorothy Doe Roe, well known to defendant from the facts here set forth; and on behalf of all other persons situated similarly

to plaintiff and to Mrs. Roe.

3. Defendant, the State of Connecticut, has the office of its Secretary of State at Hartford. The Connecticut State Board of Mental Health administers Fairfield State Hospital, Newtown, Connecticut, at which William F. Green, M.D., is Superintendent.

4. (a) Since 1941 plaintiff has been favorably disposed towards Miss Dorothy Doe, now Mrs. Dorothy Doe Roe, and he maintains high regard for her today.

(b) In addition to his friendship with and affection for Mrs. Dorothy Roe, now single, plaintiff also cherishes her children in the spirit of his regard for their mother, and he desires to express his sentiments to her children personally.

(c) Plaintiff's high regard since the winter of 1940-41 also extends to Mrs. Roe's mother Mrs. Edward F. Doe, to her late father Mr. Edward F. Doe, to her brothers Mr. Robert E. and Mr. Donald Doe, each of Old Greenwich, Connecticut, and also extends to several members of their families in friendships starting in 1941 or since.

5. (a) For 23 months since September 1955, and continuing now and into the foreseeable future, plaintiff's attempts to visit, communicate with, locate, or ascertain information about Mrs. Dorothy Roe, have been and are prevented by the defendant, despite the fact that Mrs. Roe has been and remains under defendant's care and supervision.

(b) On July 8, 1957 at Fairfield State Hospital the Clinical Director reaffirmed directly to plaintiff the defendant's previous orders effective since September 1955.

(c) The orders of defendant refused to all persons except a few relatives, the right to visit Mrs. Dorothy Roe; or to communicate with her; or to receive information through the hospital about her.

(d) On July 20, 1957, plaintiff confirmed defendant's orders by letter to the defendant.

6. Since September 1955, plaintiff has attempted unsuccessfully to communicate with Mrs. Dorothy Roe.

(a) In no instance has plaintiff's communication been permitted to reach Mrs. Dorothy Roe.

(b) As one result, plaintiff was prevented from sharing with Mrs. Dorothy Roe the loss of her father on October 13, 1955, and her attendance at his funeral.

(c) Plaintiff's attempted communications included numerous greeting cards, brief letters, and small gifts by mail, to at least six addresses, each with a request for direct delivery or for forwarding. Many of those undelivered communications were returned to plaintiff in a group in March, 1957.

(d) Mr. Robert E. Doe in his letter to plaintiff March 5, 1957, and Mrs. Edward F. Doe in her letter to plaintiff February 14, 1957, each establish that those orders by defendant

prevented communication by plaintiff with Mrs. Dorothy Roe.

(e) In connection with his efforts to locate or to communicate with Mrs. Dorothy Roe, plaintiff has been confined on two occasions by officials of mental hospitals in New York state, during the period from November 1955 to February 15, 1957.

7. (a) Since September 1955, plaintiff has attempted unsuccessfully to locate Mrs. Dorothy Roe at some indefinite moment of her absence from the hospital, and has been prevented by lack of information from the defendant.

(b) Since September 1955, plaintiff has attempted unsuccessfully to ascertain from defendant information concerning Mrs. Dorothy Roe as the basis for actions in her behalf.

8. (a) Each and all of those orders by defendant deprive the plaintiff, and also Mrs. Dorothy Roe, of...rights, privileges and immunities secured by the Constitution of the United States, and by Acts of Congress providing for equal rights of citizens.

(b) Plaintiff further complains of deprivation by those orders of such rights, privileges, and immunities under color of, or by the provisions of any federal or state law, statute, ordinance, regulation, custom or usage; either by representatives of the defendant only, or by their concerted agreement with other persons.

(c) The continuation of each and all of such orders by defendant, now and hereafter,

constitutes a continuing wrong to which plaintiff here records his continuing objection.

9. It is foreseeable that additional issues may result from rightful disclosure to plaintiff of the information now withheld by defendant, and plaintiff requests leave thus to amend at that time.

10. Especially as the result of lack of such information in hand, plaintiff moves for immediate allowance of the relief claimed.

Plaintiff prays for:

(1) Temporary and permanent injunctions against the orders by defendant set forth herein;

(2) A declaratory judgment determining the right of plaintiff to visit, communicate with, locate, and receive from defendant full information concerning, Mrs. Dorothy Roe;

(3) All other relief to which plaintiff may be entitled in his own right, and all relief on behalf of Mrs. Dorothy Roe, and on behalf of all other persons similarly situated.

(s) Henry Merritt Farnum

Plaintiff,
168 Mason Street,
Greenwich, Connecticut.

TRANSCRIPT OF HEARING ON

PLAINTIFF'S APPLICATION FOR APPOINTMENT OF

THREE-JUDGE COURT

September 23, 1957

Before Hon. J. Joseph Smith, U.S.D.J.

MR. FARNUM: ...I submit, then, that we have precisely the type of situation covered by sections 2284 and 2281 of Title 28, providing for determination by a three-Judge Court. The issues are set forth in I of the memorandum....They relate to many aspects of the constitutionality....

(Conn., R. 17)...it is plaintiff's position that a three-Judge Court should be appointed to determine the issue of the constitutionality of statutes under which these actions have taken place in respect to the issues that are here challenged by plaintiff....

PLAINTIFF'S MEMORANDUM OF LAW

(Note: petitioner recognizes and complies with Rule 23-j-3 of this Court, that his legal argument in petition under Rule 23-h shall be presented in a single petition, and not apportioned to a supporting brief. This document is appended solely for identification, not as a supporting brief under those Rules. Therefore its citations are not indexed. See supra, footnote 39)

Hon. J. Joseph Smith, U.S.D.J.
For hearing September 23, 1957

I. There are clear issues of federal constitutionality to be adjudicated.

A. As to plaintiff, in his own behalf....

2. Freedom in pursuit of happiness. (Amend. IX, Constitution; Conn. R. 20-21)

B. As to plaintiff, a friend and interested party, on behalf of Mrs. Dorothy Doe Roe

1. Law recognizes friend's right to act on behalf of patient

a. Visits by lawyer retained by or for a patient "by a relative or friend of such patient". (Conn. Gen. Stat. 1949, sec. 2678)

b. Writ of habeas corpus, "or on his behalf by any relative, friend, or person interested in his welfare" (Conn. Practice Manual, Form 432, "Habeas by a Friend")

....

II. The federal constitutional issues are within the jurisdiction of the United States District Court for the District of Connecticut.

A. If defendant's orders are authorized by a state statute, or by order of a board or commission, then three-judge court should be appointed.

1. Title 28, sec. 2284, USC, Procedure of Convening

2. Title 28, sec. 2281, USC, Injunction v. state statute or order of board or commission.

B. If defendant's orders are under color of state statute, custom or usage, this court has original jurisdiction.

1. Civil Rights Act of 1957, amending title 28, sec. 1343. (85th Congress, Public Law 85-315, September 9, 1957, 62 Stat. 932)

Right "...to recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights...." (Part III, sec. 121)

2.a. Liability for actions under color of law (Title 42, sec. 1983)

b. Liability for conspiracy (Title 42, sec. 1985)

...

Respectfully submitted,

(s) Henry Merritt Farnum
Plaintiff

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action, File Number 123-315

COMPLAINT

Henry Merritt Farnum, Plaintiff	
v.	Filed August 19, 1957
New York State Department of Mental Hygiene, Defendant	

1. This complaint arises under the Act as amended September 3, 1954, c. 1263, sec. 42, 68 Stat. 1241; USC, Title 28, section 1343; and other statutes; as hereinafter more fully appears.

2. (a) Plaintiff, Henry Merritt Farnum, resides at 70 W. 46th Street, New York 36, New York, and acts in his own behalf, and on behalf of all other persons similarly situated.

(b) Defendant, New York State Department of Mental Hygiene, is administered by Commissioner Paul H. Hoch, M.D., Gov. Alfred E. Smith Building, Albany, New York, and by the Director of Manhattan State Hospital, Paul H. Travis, M.D., Wards Island, New York 35, New York.

3. (a) For fourteen months, from December 1955 to February 15, 1957, plaintiff was confined in Manhattan State Hospital.

(b) Plaintiff was discharged from "convalescent care" July 25, 1957.

4. (a) After that discharge plaintiff requested the full opportunity to examine, and to receive a complete transcript of the records, files, and all other material related to his confinement, including such material subsequent thereto; referred to hereinafter as the record.

(b) Plaintiff requested to be included in that record the name of all descriptive and other titles, file headings, code numbers, and related information, by which reference is made to such material.

(c) Those requests were made by certified letters to the defendant. No part of the requested record was offered in reply to those requests.

5. (a) The orders by defendant to withhold from plaintiff the facts of record now secret, deprive the plaintiff of...rights, privileges and immunities secured by the Constitution of the United States, and by Acts of Congress providing for equal rights of citizens.

(b) Plaintiff further complains of deprivation by such orders of his rights, privileges and immunities under color of any state law, statute, ordinance, regulation, custom or usage; either by representatives of the

defendant only, or by their concerted agreement with other persons.

(c) One characteristic of a wrongful claim of discretionary power is power to grant, as well as power to deny a request, and plaintiff objects equally to both results, now and hereafter as a continuing wrongful claim, as to any or all of the record requested from defendant, in plaintiff's own behalf and on behalf of all other persons similarly situated.

(d) In order to enable a clear decision as to the unconditional right of plaintiff to receive the record from the defendant, this complaint refrains from citing at this time specific issues to which that record may be relevant.

6. It is foreseeable that additional issues may result from rightful disclosure to plaintiff of the record now withheld, and plaintiff requests leave thus to amend at that time.

7. Especially as the result of lack of such record in hand, plaintiff moves for immediate allowance of the relief claimed herein.

Plaintiff prays for:

(1)A permanent injunction against all orders by defendant withholding the requested record;

(2)A declaratory judgment on behalf of plaintiff and all other persons similarly situated, determining the unconstitutionality and illegality of such orders by defendant, therefore enjoined;

(3)All other relief to which plaintiff may be

entitled in his own right, and on behalf of all other persons similarly situated.

(s) Henry Merritt Farnum
Plaintiff

70 W. 46th Street,
New York 36, New York.

AFFIDAVIT

Harold Borgwald, Esq.,
Assistant Attorney General
of the State of New York

Farnum v. New York State Dept. of Mental Hygiene,
October 9, 1957, NYS R. 19

....

Deponent respectfully calls the attention of this Court to the fact that the said records, exclusive of the dates of commitment and discharge, are confidential communications, pursuant to the provisions of the Mental Hygiene Law....

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Farnum v. New York State, etc.

PLAINTIFF'S APPLICATION FOR THREE-JUDGE COURT

(Filed October 7, 1957)

1. The complaint in this case arises under USC Title 28, section 1343, as amended September 9, 1957 by the Civil Rights Act of 1957, 85th Congress, Public Law 85-315, 62 Stat. 932. Further statutory basis comprises USC Title 42, sections 1983 and 1985, and other statutes.

2. Plaintiff hereby applies for hearing by a three-judge court of plaintiff's claim for relief from defendant's orders pursuant to the Mental Hygiene Law of the State of New York, and for hearing of related issues. Plaintiff applies under USC Title 28, sections 2281 and 2284.

3. Plaintiff hereby requests preliminary hearing before such court on the earliest possible date, of plaintiff's request for an interlocutory injunction against all orders by defendant withholding from plaintiff the requested record described in paragraph 4 of the complaint.

4. Defendant's orders pursuant to the Mental Hygiene Law of the State of New York, declare the records requested by plaintiff to be confidential and privileged. Those orders raise clear issues of federal unconstitutionality, including violations of amendments...and IX of the Constitution of the United States....

PLAINTIFF'S REPLY MEMORANDUM OF LAW

(Note: this document is appended solely for identification, and not as a supporting brief under Rules 23-h and 23-j3 of this Court. Therefore its citations are not indexed. See supra, footnote 39, and p. B-7)

To Hon. Sylvester J. Ryan, U.S.D.J.

Farnum v. New York State Dept. Mental Hygiene

Outline of Plaintiff's Reply

POINT I.

THE COMPLAINT PRESENTS SUBSTANTIAL ISSUES OF CONSTITUTIONALITY.

A. First issue of law: any state statute which authorizes the defendant to withhold the facts of record now secret, is an unconstitutional statute.

....

POINT II.

THE COMPLAINT PRESENTS IMPORTANT ISSUES OF LAW RELATING TO THE CIVIL RIGHTS ACT OF 1957.

POINT III.

THE COMPLAINT PRESENTS IMPORTANT ISSUES OF FACT FOR DECISION BY A THREE-JUDGE COURT IN PLAINTIFF'S REQUEST FOR INJUNCTIVE RELIEF.

POINT I.

THE COMPLAINT PRESENTS SUBSTANTIAL ISSUES OF CONSTITUTIONALITY. Bell v. Hood et al., 327 U.S. 678, 681-3, 9 L. Ed. 939, 6 S.Ct. 773 (1946); Fay v. Douds, 2nd Cir., 172 F.2d 720 (1949)

A. First issue of law: any state statute which authorizes the defendant to withhold the facts of record now secret, is an unconstitutional statute.

1. That issue of law is presented clearly by paragraph 5(a) of the complaint:

"5. (a) The order by defendant to withhold from plaintiff the facts of record now secret, deprives the plaintiff of...rights, privileges and immunities secured by the Constitution of the United States, and by Acts of Congress providing for equal rights of citizens."

2. That issue of law is joined by defendant's affidavit of October 9, 1957, page 1:

"...said records, exclusive of the dates of commitment and discharge, are confidential communications, pursuant to the provisions of the Mental Hygiene Law...."

3. The Mental Hygiene Law of New York State, sections 20 and 34 (9) and (16), are in plaintiff's Memorandum, pp. 8 and 9.

4. Substantial issues of constitutionality are to be briefed and argued at trial. Cf. plaintiff's Memorandum....

I. A-5Therefore, contrary to defendant's contention, the complaint shows serious questions under federal and state law.

....

POINT II.

THE COMPLAINT PRESENTS IMPORTANT ISSUES OF LAW RELATING TO THE CIVIL RIGHTS ACT OF 1957.

A. Paragraph 1 of the complaint declares, "This complaint arises under...USC, Title 28, section 1343...."

B. Applicable provisions of that Act, including its section 4 enacted by the Civil Rights Act of 1957 during the pendency of this case, are set forth in plaintiff's Memorandum, pp. 6 and 7. That section modifies any principle that civil rights relief "sounds in tort".

C. "This case presents a unique opportunity to stabilize the original jurisdiction of federal courts in the protection of civil rights." Cf. plaintiff's Memorandum, I,A, pp. 5 to 7.

POINT III.

THE COMPLAINT PRESENTS IMPORTANT ISSUES OF FACT FOR DECISION BY A THREE-JUDGE COURT IN PLAINTIFF'S REQUEST FOR INJUNCTIVE RELIEF. Cf. "The Facts", plaintiff's Memorandum, pp. 2 and 3. Stratton v. St. Louis Southwestern Railway Co., 282 U.S. 10, 15, 51 S.Ct. 8, 75 L.Ed. 135 (1930); Ex Parte Northern Pacific Ry. Co., 280 U.S. 142, 144, 50 S.Ct. 70, 74 L.Ed. 233 (1929).

III....

B.Defendant's order results in important issues of fact relating to irreparable loss of civil rights by plaintiff.

1.That loss of civil rights is imminent, and plaintiff will be prejudiced irreparably by delay.

"The plaintiff is exposed to irreparable loss of civil rights by the order of defendant. Any and all such rights may be jeopardized by each eventuality in paragraphs 5 to 7 of 'Facts'...." Plaintiff's Memorandum, p. 16, II,A,3.

2.That loss of civil rights by plaintiff would be permanent and irreparable. Cf. "The Facts", plaintiff's Memorandum, pp. 2 and 3, paragraphs 5 to 7, and 10.

C.Therefore the irreparable loss of civil rights by plaintiff, as the result of defendant's unconstitutional withholding of the hospital record of facts, and defendant's opposition here to inquiry into the facts of that withholding, hides the truth behind a double screen which this court has authority to penetrate.

Plaintiff therefore prays that,

1. Defendant's motion to dismiss for lack of a substantial constitutional issue, be denied; and that
2. Plaintiff's motion for appointment of a three-judge court to decide the issues of law and fact as to irreparable loss of civil rights by plaintiff, and related issues, be granted....

PLAINTIFF'S MOTION
FOR SUPPLEMENTAL CERTIFICATION OF DOCUMENTS

for Record on Appeal to United States
Court of Appeals, 2d Circuit,
Under Its Rule 11(b)

(Filed December 23, 1957)

A. The following documents were specifically listed and designated by plaintiff's Notice of Record on Appeal, but were not certified by the Clerk of Court as requested by the plaintiff.

1. Plaintiff's Memorandum of Law;

2. Defendant's Memorandum of Law; and

3. Plaintiff's Exhibits in Support of Memorandum of Law.

Documents #'s 1 and 3, uncertified, are included in the file deposited with the Court of Appeals, and are marked "...to be returned to District Court". Thus availability of those documents on appeal is not assured, and their authenticity is not certified.

B. Document #2 was in the official file of the case on November 13, 1957, many days after the judgment was filed. At some intervening time before transmittal of the file to the Court of Appeals, document #2 was removed from the file without plaintiff's consent. As of this date it is neither in the District Court File Room, nor in the file transmitted to the Court of Appeals.

Inasmuch as the motions were submitted without oral argument, the record on appeal therefore is without any record, authenticated or otherwise, of the content and scope of defendant's legal argument which was before the judge for decision, which prevailed in the District Court, and which is contested upon appeal.

C. Plaintiff's duplicate copy of document #2 is attached to the original copy of this motion.

D. Plaintiff contends that the above three documents comprise "original papers in the file dealing with the action or proceeding in which the appeal is taken...." under Federal Rule 75 (o), and under Rule 11 (b) of the Court of Appeals for the Second Circuit.

By analogy and in support of plaintiff's contention, the Clerk of Court has carefully certified a similar document in this case, Plaintiff's Reply Memorandum of Law, pages 24 to 30 of the record.

E. Plaintiff further contends that those documents have an important relationship to the merits of the case, and are required to be certified to the above Court of Appeals under Federal Rule 75 (o), in the same manner that certification would be required of "...matter designated by the parties...." under Federal Rule 75 (g) in Courts of Appeals of circuits acting thereunder.

F. Plaintiff contends that Federal Rule 75 (o) is not intended to be more restrictive than Rule 75 (g).

G. Plaintiff contests the events described above as violating the Constitution of the United States....

H. Plaintiff therefore moves that a Supplemental Certification be issued by the District Court authenticating each of the above three documents and this Motion, each specifically by its title, and transmitting the same to the Court of Appeals for the Second Circuit as part of the record on appeal.

(s) Henry Merritt Farnum
Plaintiff

....

APPENDIX C: OPINIONS AND JUDGMENTS BELOW

RULING ON MOTIONS
Farnum v. Connecticut.

Plaintiff's Application for Appointment of a Three-Judge Court

Plaintiff's Motion for an Interlocutory Injunction

Defendant's Motion To Dismiss the Complaint

Transcript of Hearing on Motions at Hartford, Connecticut, On September 23, 1957, before Hon. J. Joseph Smith, USDJ (Conn. R. 18)

....

THE COURT: The Court will rule on the motion.

The complaint sets forth a claim which, so far as the Court knows, is unique. The complaint purports to be a class action, apparently brought in three capacities, one to redress the claimed deprivation of rights of plaintiff as an individual; second, to redress the deprivation of rights of the patient; and, third, others in the same situation as a class, a class claim to improve those situated similar to both the plaintiff and the patient.

However, it is not a proper class action, and so far as it purports to be for the benefit of the patient, the plaintiff does not set forth any relationship which would give him a standing to sue on behalf of the patient.

So far as his own claims are concerned, the right to visit one not a relative in a State institution is not a right which has heretofore

been considered a right guaranteed by the Civil Rights Act.

If the action could be considered as a type of complaint looking towards release of the plaintiff, not the plaintiff, but release of the patient by means of writ of hebeas corpus, of course, it would be defective for lack of allegation of exhaustion of State remedies or of facts which would make the commitment and present detention of the patient illegal.

The motion to dismiss the complaint is granted.

The motion for interlocutory judgment is denied, and the motion for a three-judge Court is denied.

Judgment may enter dismissing the action.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Farnum v. Connecticut

JUDGMENT

(Filed September 25, 1957)

This cause came on to be heard on defendant's motion to dismiss on the grounds of lack of jurisdiction, incapacity of the plaintiff to sue, and that improper relief is sought, and the court having granted said motion,

It is hereby ORDERED, ADJUDGED and DECREED that this action be and it hereby is dismissed on the merits and that defendant recover its costs.

Dated at New Haven this 23rd day of September, 1957.

(s)Gilbert C. Earl,
Clerk

Approved as of September 23, 1957
(s) J. Joseph Smith
Chief Judge,
United States District Court

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Farnum v. Connecticut

MEMORANDUM OF DECISION ON
MOTION TO ALTER AND AMEND JUDGMENT

(Filed October 23, 1957)

Since judgment was entered on motion to dismiss following denial of motion for appointment of three judge court, on the face of the pleadings, no findings of fact were made. Even if plaintiff's allegations of fact are accepted as true, this Court has no jurisdiction over the management of the State institution at the suit of one with no authority to represent an inmate.

The motion to alter and amend the judgment is denied.

Dated at Hartford, Connecticut, this 22nd day of October, 1957.

(s) J. Joseph Smith

United States District Judge

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Farnum
v.
New York State Department of Mental Hygiene

JUDGMENT

(Entered November 8, 1957)

Plaintiff, appearing in person, seeks a declaratory judgment adjudging unconstitutional and illegal certain orders of the defendant, an agency of the State of New York, and asks injunctive relief against the application of enforcement of these orders.

Plaintiff alleges that he was a patient at Manhattan State Hospital from December 1955 to February 15, 1957 and was thereafter discharged from convalescent care on July 25, 1957. Manhattan State Hospital is an institution for the care and treatment of the mentally disturbed. Plaintiff's claim is that he has been denied opportunity to examine or inspect the records of that institution concerning his treatment and custody and has been refused a copy of these records and that this is so because of orders of the defendant.

Plaintiff moves for a hearing by a three-judge court under Secs. 2281 and 2284, 28 USCA

Defendant moves to dismiss upon the ground that the complaint fails to state a claim for relief and that the Court lacks jurisdiction

of the subject matter and of the defendant.

Apparently it is plaintiff's contention that the provisions of Section 34 of the New York Mental Hygiene Law which provide that records of patients shall be accessible only to the Director of the Hospital and his designees and to the Commissioner and his representatives "except on the consent of the Commissioner or an order of a judge of a court of record," is unconstitutional. This section does not operate to deprive either the plaintiff or anyone else of constitutionally protected rights. There is no allegation that plaintiff has exhausted his available state administrative or judicial remedies.

The complaint is dismissed, but without costs. Let judgment be entered accordingly.

(s) Sylvester J. Ryan
USDJ

11/7/77

(Memo. Endorsed)

RULING ON MOTION
FOR SUPPLEMENTAL CERTIFICATION

Farnum v. New York State, etc., NYS R.47

This is accepted as a motion made by appellant under Rule 75 (h) F.R.C.P.

Plaintiff's and Defendant's memoranda of law submitted to the District Court, form no part of the record on appeal; however, in the

appeal prosecuted by appellant pro se the Court of Appeals may of its own motion require the submission of these briefs.

Motion denied, so ordered.

(s) Sylvester J. Ryan
U.S.D.J.

December 27, 1957

(Ruling Endorsed)